

SPECIAL CIRCUMSTANCES OF NEVER MARRIED PARENTS

- May never have expected court involvement, and may have never been involved in a confrontational context;
- The parents may have never been in a relationship;
- There may have been a history of “informal” or “cooperative co-parenting that one parent now seeks to change;
- The parents may not live in close proximity and there are additional time/costs associated with the parenting relationship;
- The parents may never have discussed expectation of being a parent nor issues associated with discipline, schooling, health care, third party involvement (i.e. grandparents etc....);
- There may be more issues related to third parties involved with the upbringing of the child;
- The child may not know one of the parents;
- There may be issues of a nonlegal parent acting as a parent;
- There may be a question of legal status;
- There may be issues of substance abuse, infidelity, physical abuse, etc...that factor into decision not to marry;
- Youth, unemployment, prison

REASONS NEVER MARRIED PARENTS MAY BECOME INVOLVED WITH THE LEGAL SYSTEM

- Public assistance/State petition for child support;
- One or both of the parties “clean up”;
- One of both of the parties are tired of third party control;
- A child may want to establish or reestablish contact with an absent parent;
- Marriage of either party;
- Absent parent has “grown up”;

CHALLENGES OF NEVER MARRIED PARENTS IN MEDIATION

- ❖ Introduction or reintroduction of child to absent parent;
- ❖ Why now?
- ❖ Will third party attachments continue;
- ❖ Age of child/preferences of child
- ❖ Communication;
- ❖ Experience as a parent;
- ❖ Suspensions/resentment/lack of trust;
- ❖ History of violence or addiction issues

CHALLENGES WITH PRO SE LITIGANTS IN MEDIATION

- Communication—
Differences in style;
Balance of Power/Empowering the less assertive party;
- Establishing Rapport/Trust
- When to use the caucus
- Agent of Reality;
- Assess the Listening/be the listener;
- Evaluation of comfort/Access for Domestic Violence
- If one party has an attorney and one doesn't

- Oyserman, D., Radin, N., & Benn, R. (1993). Dynamics in three-generational families: Teens, grandparents and babies. *Developmental Psychology*, 29(3), 564-572.
- Parish, W. L., Hao, L., & Hogan, D. P. (1991). Family support networks, welfare, and work among young mothers. *Journal of Marriage and the Family*, 53, 203-215.
- Raisner, J. K. (1997). Family mediation and never-married parents. *Family and Conciliation Courts Review*, 35, 90-101.
- Ricci, I. (1997). *Mom's house, Dad's house*. New York: Penguin.
- Salem, P., & Milne, A. (1995). Making mediation work in domestic abuse. *Family Advocate*, 17(3), 34-38.
- Testa, M., & Krogh, M. (1995). The effect of employment on marriage among black males in inner-city Chicago. In M. B. Tucker & C. Mitchell-Kernan (Eds.), *The decline in marriage among African Americans: Causes, consequences, and policy implications* (pp. 59-99). New York: Sage.
- Thoennes, N., Salem, P., & Pearson, J. (1995). Mediation and domestic violence: Current policies and practices. *Family Conciliation Courts Review*, 33(1), 6-29.
- Uniform Parentage Act. (2000). *Family Law Quarterly*, 35, 1-97. Available: www.nccusl.org
- Wilson, W. J. (1996). *When work disappears: The world of the new urban poor*. New York: Knopf.
- Woodhouse, B. B. (1993). Hatching the egg: A child-centered perspective on parents' rights. *Cardoza Law Review*, 14, 17-47.

SELECTED READINGS ON PARENTAGE

Courtesy of Mary Therese Doheny, JD, Law Offices of Wessel & Doheny, 188 West Randolph Street, Suite 1100, Chicago, IL 60601; (312) 558-3000.

Claiborne, J. (1999). From partners to parents: Toward a child-centered family law jurisprudence. *Santa Clara Law Review*, 39, 4. —This article discusses the relationship of the parents and the importance of the cooperative parental partnership in custody decisions. It is relevant because there is often a wide variance in the parental relationship, which may influence custody decisions.

Harris, L. J. (1996). Reconsidering the criteria for legal fatherhood. *Utah Law Review*, 461. —Discusses biological fatherhood in the context of custody decisions and embraces concept of "functional paternity" as a basis for establishing parental obligations and rights.

Kaplan, D. S. (2000). Why truth is not a defense in paternity action. *Texas Journal of Women and the Law*, 10, 69. —The conflict between historical presumptions about paternity and the emerging scientific (DNA) knowledge that refutes those presumptions is examined in this article. The author sees courts reacting to this conflict in three different ways. Courts have adopted different models, either highly discretionary or extreme and unforgiving, when it comes to the admittance of DNA evidence. Court responses range from always excluding DNA evidence that rebuts presumption of paternity (Pennsylvania) to always admitting evidence (Massachusetts) or excluding DNA based on best interest (New York).

Nolan, L. (1999). Children and their parents before the United States Supreme Court from Levy to Michael H.: Unlikely participants in constitutional jurisprudence. *Capital University Law Review*, 28, 1. —Reviews U.S. Supreme Court cases from 1968 to 1989 and concludes that the U.S. Supreme Court has erased most common-law disabilities for children while also recognizing a father's liberty and interest in relationship with the child.

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Roberts, P. (2001). Biology and beyond: The case for passage of the New Uniform Parent-
age Act. *Family Law Quarterly*, 35, 41. —This article provides an overview of the history of
parentage and the development of the law for parents and children. The author lists the
various modern issues in parentage and discusses how the Uniform Parentage Act
addresses those issues.

Williams, W. C. (1997). The paradox of paternity establishment: As rights go up, rates go
down. *University of Florida Journal of Law and Public Policy*, 8, 261. —This article discusses
child support and mandatory paternity establishment.

Woodhouse, B. B. (1993). Hatching the egg: A child-centered perspective on parents'
rights. *Cardozo Law Review*, 14, 17-47. —This is an incredibly well written and informative
article that focuses on the child's perspective and stretches the mind, particularly if the
reader is an attorney who represents children. Recommended reading.

Folberg, Milne, Salem. Divorce and Family
Mediation (2004)